



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2017

CORAM:

THE HONOURABLE **MR. JUSTICE T.S.SIVAGNANAM**
AND
THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

W.P. (MD) No.13665 of 2013 &
M.P. (MD) .Nos.1 & 2 of 2013

V.Subbaraman

... Petitioner

Vs .

1. The District Munsif cum Judicial Magistrate,
Cheranmahadevi,
Tirunelveli District.
2. The State of Tamil nadu,
rep. By its Secretary to Government,
Finance Department,
Secretariat,
Chennai-600 009.
3. The Principal Accountant General
(Accounts & Entitlements),
361, Anna Salai, Teynampet,
Chennai-600 018.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent in connection with the impugned endorsement made in Pen2/3/10207858/Rtd/12-13, dated nil in the Petitioner's Service Book at Page No.29 in regard to the pension calculation and further order passed by 3rd respondent in Pen2/II/RO207858/Pt 7922, dated 07.1.2013 and consequential recovery order passed by the 1st respondent vide his official Memorandum No.Nil, dated 19.02.2013 and quash the all as illegal and arbitrary and consequently direct the 3rd respondent to refix the petitioner's pensionary benefits based on the last drawn salary i.e. of Rs.16,140/- and sanction the Personal Pay of 5% with effect from his initial appointment i.e. 31.01.1994 based on G.O.Ms.No.664, Finance (Pay Cell) Department, dated 24.08.1992 passed by the 2nd respondent with interest within the time limit that may be stipulated by this Court.



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For Petitioner	: Mr.K.Gurunathan for
	M/s.D.Selvanayagam
For Respondents	: Mr.K.Samidurai for R1
	Mr.S.Chandrasekar for R2
	Government Advocate
	Mr.P.Gunasekaran for R3

O R D E R

[Order of the Court was made by T.S.SIVAGNANAM,J]

Heard Mr.K.Gurunathan, learned counsel appearing for the petitioner, Mr.K.Samidurai, learned counsel appearing for the first respondent, Mr.S.Chandrasekar, learned Government Advocate appearing for the second respondent and Mr.P.Gunasekaran, learned counsel appearing for the third respondent.

2. With consent of the learned counsel on either side, the writ petition itself is taken up for final disposal.

3. The petitioner has filed this writ petition challenging the endorsement made in the petitioner's service register in Pen2/3/10207858/Rtd/12-13 at page number 29 with regard to the calculation of pension and the order passed by the third respondent, the Principal Accountant General, Chennai, dated 07.01.2013.

4. The dispute in the instant case lies in a very narrow compass. The undisputed fact is that the petitioner, who was appointed as Senior Bailiff on 31.01.1994, attained the age of superannuation and retired in the same post. The petitioner's grievance is that 5% personal pay which was ordered to be granted even on the date of appointment has not been granted and therefore, he had submitted representations. However, the Principal Accountant General, took a stand that the petitioner was appointed as Senior Bailiff on 31.01.1994 and personal pay of Rs.49/- is not admissible. However he is entitled to 5% Personal Pay on 01.09.1998. Further it has been stated that the petitioner's post of Senior Bailiff is not mentioned in G.O.63 and the revision made by the Government is not admissible. Following the communication from the Principal Accountant General, the first respondent has passed the consequential order dated 19.02.2013 proposing to recover a sum of Rs.1,19,369/-, vide proceedings dated 19.02.2013. The proceedings dated 07.01.2013 and 19.02.2013 are impugned in this writ petition.

5. The legal issue involved in this writ petition is no longer *res integra* and it has been settled by this Court in the earlier writ petition filed by the Tamil Nadu Judicial Senior Bailiffs' Association, Virudhunagar District in W.P.(MD).No.8818 of 2008. The prayer sought for in the above-said writ petition was to quash the orders passed by the State Government dated 08.08.1999 and to direct the respondents therein to grant 5% Personal Pay with interest to the Senior Bailiff as per G.O.Ms.No.664, Finance (P.C.) Department,

dated 24.08.1992 with effect from 01.08.1992. The writ petition was allowed vide order dated 13.10.2009. At this juncture, it is worthwhile to extract the order in its entirety hereunder:-

"2.The petitioner herein is the Tamil Nadu Judicial Senior Bailiffs' Association, Virdhunagar District Centre, a body affiliated to the Tamil Nadu Judicial Employees' Association, a registered body of the Judicial Ministerial staff of Tamil Nadu. The grievance of the petitioner herein is that Senior Bailiffs were neglected by the Government as regards the IV-Pay Commission. Considering the fact that the High Court has recommended fixation of pay scale of Senior Bailiffs on par with Junior Assistant in terms of V-Pay Commission, there being no positive reply from the Government, the petitioner Association filed W.P.No.6641 of 1991 and W.P.No.1167 of 1992 and the Court directed the 1st respondent to fix the pay scale of Senior Bailiffs on par with Junior Assistant and the same was implemented by the 1st respondent vide G.O.Ms.No.61, Finance (P.C.) Department, dated 24.01.1996. It is further stated that in the mean time by G.O.Ms.No.664, Finance (P.C.) Department, dated 24.08.1992, the 1st respondent had granted 5% of the Basic Pay as personal pay to all categories of staff who come under Category (ii) of para 4 of the above said G.O. with effect from 01.08.1992. Since the members of the petitioner Association, who are entitled to the same benefit, were denied the fruits of the said G.O., they approached the Government and their claim was rejected and by order dated 08.08.1999 the benefits already granted were directed to be recovered. In the circumstances, the present proceedings are initiated before the Court challenging the letters of the 1st respondent, dated 08.08.1999 and 08.09.1999.

3. On notice, learned counsel appearing for the respondents fairly placed before this Court a Division Bench decision of this Court, dated 10.03.2006, made in W.P.Nos.20156 and 13143 of 2000, wherein this Court held that the omission of Selection Grade Head Clerks and Translators, etc., from the benefit of G.O.Ms.No.664 could not be sustained and there were no materials to support the said omission. Referring to the orders passed in W.P.No.928/1995, dated 15.04.1999, the Division Bench held that the said exclusion is violative of Article 14 of the Constitution of India and that equals were treated unequally and consequently the petitioners therein, who were serving as Head Clerks, were entitled to Personal pay which is 5% of their Basic Pay.

4. Considering the order thus passed on a similar set of circumstances, we set aside the orders of the 1st respondent, dated 08.08.1999 and 08.09.1999, thereby



allowing the writ petition granting the relief sought for and that the members of the petitioner Association are entitled to the benefit of G.O.Ms.No.664, Finance (P.C.) Department, dated 24.08.1992 as regards grant of 5% personal pay. Considering the recovery already made, we hold that it is a fit case where interest at the 6% per annum is to be paid from 01.08.1992. No order as to costs. "

6. The above referred decision of the Honourable Division Bench was implemented by the Government vide G.O.Letter No.34283/CMPC/2010, dated 10.09.2010 thereby ordering implementation of the above judgment to the post of Senior Bailiffs in Judicial Department with effect from 01.08.1992, with a rider that the benefit of Personal Pay shall be allowed to the above post as along as they continue in the post. Admittedly, the petitioner was appointed as Senior Bailiff after the cut off date i.e. on 31.01.1994 and he is entitled to the benefits of Personal pay. Therefore, the stand taken by the third respondent in the impugned order, dated 07.01.2013 that personal pay is not admissible to the petitioner is incorrect.

7. One more aspect in the impugned order is that 5% personal pay is restricted to 01.09.1998. This is also an error committed by the office of the Principal Accountant General on a misinterpretation of the date mentioned in Government Order in G.O. (MD).No.497, Finance (Pay Cell), Department, dated 15.09.1998. It is to be noted that much after the said Government Order, the Division Bench considered the entire aspect and has directed that the post of Senior Bailiff will be entitled for the benefit of Personal Pay and admittedly, the petitioner having been appointed after the said cut off date is entitled for the benefit of 5% Personal Pay. The reasons assigned in the impugned order that the post of Senior Bailiff is not mentioned in G.O.Ms.No.63, Finance (Pay Cell) Department, dated 26.02.2011 is not sustainable for the reason that the Court has granted the relief, which has also been implemented by the Government.

8. In the light of the above finding, the consequential order passed by the first respondent dated 19.02.2013, proposing to recover a sum of Rs.1,19,369/- from the petitioner retirement benefit is also untenable.

9. For the above reasons, the writ petition is allowed and the impugned orders are set aside. The first respondent is directed to send a fresh proposal calculating the petitioner's entitlement of Personal Pay at 5% from the date of appointment i.e. 31.01.1994 till the date on which he is eligible to draw 5% Personal Pay, within a period of six weeks from the date of receipt of a copy of this order. On receipt of such proposal, the Principal Accountant General (Accounts & Entitlements), Chennai is directed to process the same and sanction for payment of the said amount within a period of 4 weeks thereafter.



10. It is pointed out by the learned counsel for the petitioner that in the certificate issued by the third respondent, dated 11.07.2012, the last pay drawn by the petitioner was wrongly calculated. Probably this is because of non inclusion of 5% personal pay at the appropriate stage. This matter also be looked into by the first respondent as well as third respondent while sanctioning the proposal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif cum Judicial Magistrate,
Cheranmahadevi,
Tirunelveli District.
2. The Secretary to Government,
State of Tamil nadu,
Finance Department,
Secretariat,
Chennai-600 009.
3. The Principal Accountant General
(Accounts & Entitlements),
361, Anna Salai, Teynampet,
Chennai-600 018.

- + 1 CC TO Mr.D.SELVANAYAGAM, ADVOCATE IN SR No. 16468
- + 1 CC TO Mr.P.GUNASEKARAN ADVOCATE IN SR No. 16277
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 16187

JIKR/SJ
TE/SV-MMS/SAR-IV : 05/04/2017 : 5P/7C

ORDER MADE IN
W.P.(MD) No.13665 of 2013 &
M.P.(MD).Nos.1 & 2 of 2013
20.03.2017